STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2011
v	No. 298893 Muskegon Circuit Court
DAVID MARK COLE, Defendant-Appellant.	LC No. 09-057782-FH

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. *(dissenting).*

I respectfully dissent.

I have a great deal of sympathy for the defendant and for the majority's position. It strikes me as fundamentally unfair to expect a criminal defendant to make a knowing decision without a complete explanation of *all* of the real-world consequences he or she should expect to face as a proximate consequence of entering a plea, irrespective of whether those consequences are deemed "punishment" or a "sentence" or "collateral." Advising such a defendant of only some of those consequences might even induce him or her to believe that there are no other consequences. It is difficult to see how someone can make an intelligent and knowing decision about his or her future—and in some ways, the future of any potential witnesses who might have to discuss intimate and unpleasant details of their own lives in a public forum—on the basis of incomplete information. Undoubtedly, the better practice would be to inform a defendant of every action the state will mandatorily take against a defendant as a consequence of his or her plea, such as the tethering at issue here.[1]

Nevertheless, the law plainly does not *require* such disclosure. I agree with the majority insofar as it concludes that the disclosure required by MCR 6.302(B)(2) refers to the mandatory minimum and maximum *prison* sentence to which a defendant might be sentenced. However, I

[1] It would, of course, be impossible for any person or court to know or even speculate at *all* possible effects a plea might have on a given person's life. However, the range of actions that the state will predictably and necessarily take is finite and defined by statute.

disagree with the majority's interpretation of *People v Boatman*, 273 Mich App 405; 730 NW2d 251 (2006). In *Boatman*, the defendant was not advised of the sentencing implications of his habitual offender status, because habitual offender status is not an "offense" per se and does not itself carry any term of imprisonment. However, the failure to account for the defendant's habitual offender status resulted in a 13-year difference in the defendant's *prison sentence*. The Court Rule may not have technically required disclosure of the defendant's habitual offender status, the defendant was given wrong information about *the mandatory prison sentence* to which he might be sentenced, which is the substance of what must be accurately disclosed pursuant to MCR 6.302. See *Boatman*, 273 Mich App at 412-413.

Electronic tethering is not a prison sentence any more than is registering as a sex offender. There is no requirement for a trial court to discuss the "collateral consequences" of a plea with a defendant, even though those consequences may be severe and mandatory. See *People v Davidovich*, 238 Mich App 422, 428-430; 606 NW2d 387 (1999). The presently prevailing view is that registration as a sex offender is a "collateral consequence." *People v Fonville*, ___ Mich App ___, ___ n 59; ___ NW2d ___ (2011). This is despite the fact that such registration is mandatory and registrants are unlikely to perceive it as anything other than punishment, given the overwhelmingly destructive effect such registration would have on the rest of their lives. See *People v Dipiazza*, 286 Mich App 137; 778 NW2d 264 (2009). Lifetime electronic tethering is undoubtedly a significant inconvenience, but its impact on a defendant's life is far less than registering as a sex offender.

The Court Rule does not obligate the trial court to inform a defendant of anything other than the term of imprisonment he faces as a consequence of entering a plea. Basic principles of fairness suggest that the trial courts *should* advise defendants of any other consequences to which the state will predictably subject them. Especially where, as with the electronic tethering at issue here, those consequences are mandatory pursuant to statutes with which the sentencing court cannot be unfamiliar. It is difficult to understand how a plea can be knowingly made on the basis of what is, realistically, incomplete knowledge. However, any formal obligation for the trial court to so inform defendants should be by modification of the Court Rule, with the attendant opportunity for public comment and feedback and resulting uniformity across all courts. I respectfully urge our Supreme Court to consider increasing the scope of disclosure required by MCR 6.302. But as the law presently stands, I find that the trial court informed defendant of the consequences of his plea to the extent of the court's obligations.[2]

I would therefore affirm.

/s/ Amy Ronayne Krause

[2] Additionally, defendant does not now assert that he is actually innocent.